

While the sale of tangible personal property at retail by exclusively religious, educational or charitable organizations is generally subject to Retailer's Occupation Tax, there are three limited exceptions. See 86 Ill. Adm. Code 130.2005(a)(2-4). (This is a GIL).

October 31, 2002

Dear Xxxxx:

This letter is in response to your letter dated August 30, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

On behalf of **NAME**, please accept this letter as a request for a letter ruling concerning the application of the Illinois Retailers' Occupation and Use Taxes. Attached hereto is a duly authorized and executed IL-2848 Power of Attorney to act on behalf of **NAME** in this matter.

STATEMENT OF FACTS

NAME is a voluntary, worldwide fellowship of men and women from all walks of life who meet together to attain and maintain sobriety. The only requirement for membership is a desire to stop drinking. There are no dues or fees for membership. **NAME** is composed of groups across the country adhering to the principles and traditions of **NAME**.

Generally, nonprofit organizations **are** subject to Illinois Retailers' Occupation Tax and **are** to collect Illinois Use Tax (hereinafter collectively referred to as 'sales tax') when they make any sales of tangible personal property at retail.

There are common sales tax exemptions available to **all** retailers. These include, but are not limited to, sales to other exempt organizations, interstate commerce, and sales to organizations that resell. The procedures and exemptions are published in the Illinois Department of Revenue's *Publication 104 - Common Sales Tax Exemptions*.

NAMNE runs a bookstore operation that includes sales to its members, other **NAME** groups, hospitals, and other nonprofit organizations. The bookstore operations take into account the common sales tax exemptions.

Organizations that are **exclusively** charitable, religious or educational that have applied for and been granted tax-exempt status as a purchaser by the Illinois Department of Revenue can engage in three limiting selling activities **without** incurring an Illinois Retailer's Occupation Tax liability. See (copies attached) Illinois Regulation 86 Ill. Adm. Code 130.2005, and Informational Bulletin FY 97-23 February 1997.

1. Sales to **members** for the organization's purposes are not taxable. For example, sales of uniforms by Scout organizations and sales of Bibles by churches to their members are not taxable sales. If these sales are made to the general public, however, sales tax must be collected.
2. Noncompetitive sales with business establishments are not taxable sales. The Attorney General has set forth certain tests for determining whether such selling is noncompetitive. The one detrimental test, as it relates to NAME's bookstore operations, is that transactions must not be on a continuing basis, but rather, should take place either annually or in a reasonably small number of times within a year.
3. Occasional dinners, social events, or similar activities are not taxable, even if these events are open to the public, and are limited to two times in one calendar year. All other events held in that year are considered taxable.

Only the first exemption, sales to **members** for the organization's purposes, is available to **NAME's** bookstore operations. Only books and literature directly related to the organization's cause and purpose are sold. Additionally, mementos such as medallions and jewelry are sold. However, these are symbolic points of reference, directly related to recovery, thus directly related to the organization's purpose.

Sales of items not directly related to the organization's purpose, such as greeting cards, hats, magazines, etc. are considered taxable sales, whether sold to members or to the general public. **All sales** to the general public (including items directly related to the organization's purpose) are considered taxable sales.

The **burden of proof** regarding distinction between members and general public lies with the tax-exempt organization. **NAME** currently inquires of the purchaser at the point of purchase whether he/she is a member of the organization and then stamps receipts accordingly (examples enclosed).

RULING REQUESTED

Sales to **members** of organizations that are exclusively charitable are not subject to the Illinois Retailers' Occupation Tax. The taxpayer seeks a basis for the Department and **NAME** to agree on the method of verification of exempt sales by the bookstore to ANONYMOUS members.

We respectfully request that the simple inquiry of purchasers at the point of sale on whether he/she is a member of the organization and the stamping of copies of the bookstore's receipts as to member or nonmember shall suffice as burden of proof regarding distinction between members and the general public.

CONCLUSIONS

NAME is a unique organization. As its namesake implies, members are ANONYMOUS. In its preamble read before every meeting,

is a fellowship of men and women who share their experience, strength and hope with each other that they may solve their common problem and help others to recover from alcoholism.

The only requirement for membership is a desire to stop drinking. There are no dues or fees for NAME membership;

No membership lists are maintained. There are no mailing lists. Not even first names are verified. Anonymity is the foundation of the organization's purpose. Personal recovery of its members is its goal. In its Twelve Traditions (long and short form attached), anonymity is expressly communicated in traditions 11 and 12, which state as follows;

11. *Our public relations policy is based on attraction rather than promotion; we need always maintain **personal anonymity** at the level of the press, radio and films.*
12. ***Anonymity** is the spiritual foundation of our traditions, ever reminding us to place principles before personalities.*

ANONYMITY is very important to the organization's purpose. However, the bookstore staff recognizes the high majority of people who make purchases as members and that sales to the outside public are minimal. More importantly, sales are noncompetitive with business establishments.

To the best of the knowledge of both NAME and the undersigned, we are not aware of any rulings previously issued by the Department on the same or similar issues contained herein. NAME has not, nor has anyone on its behalf nor has any predecessor, previously submitted the same or similar issues to the Department. The taxpayer is not currently, nor has it been contacted to be, under examination by the Illinois Department of Revenue.

Organizations that qualify as exclusively religious, charitable, or educational can apply to the Illinois Department of Revenue to obtain tax exemption identification numbers. These numbers establish that the Department recognizes said organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes.

While organizations and institutions that are both operated and organized exclusively for charitable, religious, or educational purposes are as a general matter subject to Retailers' Occupation Tax upon their own sales of tangible personal property, there are three limited exceptions where such organizations are authorized to engage in a restricted amount of retail selling activity without incurring Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2005(a).

Organizations that hold exemption numbers may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities without incurring Retailers' Occupation Tax liability. Organizations that engage in ongoing selling activities to the public must register with the

Department as retailers, collect and remit tax on sales and provide suppliers with Certificates of Resale for items they sell.

The Sales to Members exemption found at 86 Ill. Adm. Code 130.2005(a)(2) is limited to sales by an exclusively religious, educational or charitable organization that are made *primarily for the purposes of the selling organization* to its members, or students in the case of a school. Please note the population to which sales are made is limited to persons specifically associated with that exempt organization and must be for the primary purpose of the selling organization. Whether the sales are for the primary purpose of the selling organization depends on the nature of the tangible personal property sold and how that tangible personal property is used. If an organization sells literature or other items of tangible personal property that would place them in competition with bookstores or other retailers, the sales generally would not be primarily for the purpose of the selling organization.

If the items your letter described (e.g., sobriety books and medallions) are sold at a closed NAME meeting to members, no tax would be due because such sales would only be made to members and would be considered to be primarily for the purpose of the exempt organization. However, the selling of such items on a continuing basis to members and nonmembers, as is described in your letter, subjects all such sales to tax. This is because Section 130.2005(a)(2) states that if such sales are made to the public at large, the selling activity is subject to the Retailers' Occupation Tax. The regulation points out this principle, for example, regarding exclusively charitable hospitals that operate cafeterias or other restaurant facilities. When such sales are limited to patients or employees, the receipts are nontaxable because the sales are considered to be primarily for the benefit of the hospital. However, if the hospital cafeteria is open to the public, all sales are taxable sales and there is no authorization for the segregation of nontaxable sales from taxable sales. See Section 130.2005(b)(1)(A).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.